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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.H., a Person Coming Under the
Juvenile Court Law.

B249554
(Los Angeles County
Super. Ct. No. CK92129)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Valerie Skeba, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

SUMMARY

S.S. (Mother) appeals from the juvenile court's order granting sole legal custody of daughter D.H. to D.L.H. (Father) and joint physical custody to Mother and Father. On appeal, Mother contends the juvenile court abused its discretion in awarding Father sole legal custody. The Department of Children and Family Services ("DCFS") filed a letter brief taking no position on Mother's appeal.¹

We affirm.

BACKGROUND

On April 2, 2012, the DCFS filed both a Welfare and Institutions Code section 300 petition as well as a Detention Report, alleging incidents of domestic violence between Mother and C.K., the father of D.H.'s half-sibling, J.S., as well as between C.K. and his other female companions. The petition alleged that Mother failed to protect then-3-year-old D.H. and then-6-year-old J.S., endangering their health and safety. At the time the petition was filed, C.K. was incarcerated.

According to the Detention Report, when a DCFS social worker interviewed Mother in January 2012, Mother denied that C.K. assaulted her, denied the accuracy of the police report, and declined to obtain a restraining order. Mother also stated she did not know how to get in contact with Father and could not provide the social worker with Father's contact information. The Detention Report attached a Los Angeles County Sheriff's Department Incident Report from January 2012, detailing that a verbal altercation between Mother and C.K. escalated to C.K. grabbing Mother by the throat, slamming her against the wall, and strangling Mother until she lost consciousness. The incident report also noted that Mother "was in fear of reporting this incident to Sheriff's Department, but once she learned [C.K.] was placed under arrest on an unrelated charge, she came forth to report this incident."

¹ Neither Father nor D.H. have filed a brief in this appeal.

At the April 2, 2012 detention hearing, none of the parties or minors were present. The juvenile court found a prima facie case to detain D.H. and J.S., made the detention findings as to Father and C.K., and ordered them released to Mother. DCFS was ordered to present evidence of due diligence in attempting to locate Father. The detention hearing was continued to April 5, 2012.

An Addendum Report filed on April 5, 2012, stated that a DCFS social worker was able to locate Father's home and spoke to Father. Father stated that he and Mother do not have communication with each other and were not on "good terms." Father had heard about the domestic violence between C.K. and Mother and expressed concern for D.H.'s safety, stating he wanted welfare checks to be done. Father stated that he and Mother had been having custody issues since they separated, alleged that Mother on several occasions kept him from D.H. and called police to falsely claim that Father had kidnapped D.H. when there were no family law orders in place. Father reported that when he initially took Mother to court to obtain more consistent visitations with D.H., Mother made accusations against Father of assault, but that there were no police reports of such incidences although there was a restraining order in place. Under the family law order, Father had overnight weekend visits with D.H. every other weekend. The Addendum Report noted that Father appeared to be a non-offending parent.

Also on April 5, 2012, Mother's counsel filed a Request for Restraining Order against C.K. with the juvenile court.

At the April 5, 2012 hearing, all parties and minors were present. The court issued a temporary restraining order against C.K. and minors remained released to Mother. The court ordered that Father would continue to have unmonitored visitation with D.H. pursuant to the existing family law order.

In a May 14, 2012 Jurisdiction/Disposition Report, the DCFS investigator reported an interview with Mother in which Mother denied a physical altercation with C.K., stating the altercation was verbal and that her head injury was from falling and hitting the dresser. Mother also alleged that the prior social worker had asked D.H. "Does [C.K.] hit your mommy all the time?" and D.H. had agreed. Mother stated that police were

involved only because C.K. had Mother's car and Mother's mom did not like that and called the police. The report stated that DCFS "believes that the children remain safe in the care of the mother as long as [C.K.] remains incarcerated. However[, DCFS] believes that should [C.K.] be released from custody the mother would reinitiate a relationship with him and the cycle of violence would continue in the presence of the children."

Attached to the Jurisdiction/Disposition Report were copies of documents from Father and Mother's family court matter. These documents show that in July 2010, Mother requested a temporary restraining order against Father which was granted until the court hearing. In September 2010, the parties reached a stipulation dissolving the temporary restraining order, agreeing to joint legal custody and to alternating weekend and one weekday physical custody for Father. In February 2011, the superior court issued an order stating that the proceeding was regarding an order to show cause and temporary restraining order filed in July 2010 and ordering Father to stay at least 100 yards from Mother's residence and D.H.'s daycare.

At a May 14, 2012 hearing, the juvenile court ordered DCFS to devise a visitation schedule for Father.

In an Addendum Report filed on June 7, 2012, DCFS reported that a social worker discussed with Mother a visitation plan that would give Father and Mother 50/50 visitation. Mother stated she was "not okay" with the arrangement because she doubted Father's good intentions, stating that he has always wanted D.H. full time. D.H. had been in Mother's home since birth with Mother having primary physical custody and Mother believed it was too drastic and emotionally difficult for D.H. to adjust because of her young age and because D.H. was very close to J.S. Mother offered an alternate visitation schedule that she believed would be easier for D.H. DCFS developed a visitation plan of alternating weekly physical custody for each parent.

At the jurisdiction/disposition hearing on June 7, 2012, the court sustained the petition and ordered DCFS to provide family maintenance services. The court ordered individual counseling for minors to address witnessing domestic violence. The juvenile

court also granted a permanent restraining order against C.K. and continued the matter for mediation as to visitation with D.H.

On June 12, 2012, Mother and Father signed a mediation agreement that provided that Father and Mother would have D.H. for alternating weeks beginning in July. At the mediation hearing later that day, the juvenile court adopted the mediation agreement in its order. The court also ordered that no one could take D.H. out of the state “without notifying the social worker.”

On June 20, 2012, DCFS walked the matter onto calendar to clarify the order regarding removal of D.H. from the state. DCFS filed an Ex Parte Application and Order on the same day, asking to amend the court’s order to state “that the children are not to leave the state of California” and noting that maternal grandmother wanted to take the children to a family reunion out of state, but that Father was uncomfortable with D.H. leaving the state as Mother had “disappeared” with D.H. in the past and had told him two different locations for the reunion. DCFS also alleged that Mother was not cooperating, as her phone was disconnected and she had not contacted DCFS to arrange therapy for the minors. The juvenile court ordered Mother not to take the minors out of state without submitting a full itinerary to DCFS.

On December 6, 2012, DCFS filed a Status Review Report stating that no issues had been reported with the children, that Father had remained in compliance with the case plan, shown up for every visit with D.H., and returned D.H. on the appropriate dates and times. The report also noted that “Father has not always agreed with the requests of the department, however he has always complied.” The report noted that Mother and Father had not been able to sit down and talk as both parents “expressed issues with this.”

The report also stated that Mother complained that D.H. is very sad during the ride to Father’s visitation and cries the entire way and D.H. says the visits are “too long.” Father stated that the visits have “gone great” with no issues. When interviewed, D.H. did not disclose any discomfort with either parent and was happy going to Father’s home but that the stay at his home was too long. D.H. stated that she does not cry in her Mother’s car.

The report stated that the social worker's observation of Mother and Father was that "both parents were very stubborn, unwilling to compromise with one another, and always appearing to want to make things as rigid as possible for one another."

In its December 6, 2012 order, the juvenile court continued the matter for mediation on January 29, 2013. Notices prepared by DCFS indicated that at the January 29 hearing, the court would consider the recommendation of the social worker to "[t]erminate jurisdiction giving [Mother and Father] shared physical and legal custody of child [D.H.] alternating weeks."

The juvenile court's January 29, 2012 order indicated that an agreement in the mediation was reached. The mediation agreement, which Mother signed, provided for joint legal custody and joint physical custody between Father and Mother, with D.H. living alternately week to week between Father and Mother.

The court trailed the matter to February 1, 2013 for receipt of family law orders. On February 1, 2013, the juvenile court continued the matter to get the family law files as there were "questions raised about restraining orders."

On February 26, 2012, the parties appeared for a contested judicial review hearing regarding the terms of a family law order as to D.H. Mother testified that there was currently a restraining order between her and Father, but D.H. was no longer included in the restraining order. Mother stated that the restraining order terminated in May 2014. While Mother had agreed to joint legal custody at the mediation, she stated that she and Father had had just the minimum of communication needed for dropping off D.H. and she did not know how they would be able to make any legal decision regarding D.H. Under questioning, Mother testified that her understanding was that the restraining order meant she could not talk to Father except for brief communications concerning visits and that would hamper her ability to have joint legal custody with Father. Mother also testified that she was opposed to joint physical custody because the social worker would no longer be involved and that she and Father had not been communicating since 2010. Mother stated that D.H. was happy to go to Father's home for visitation but is sad because the visits are too long and D.H. asks Mother to pick her up early.

On cross-examination, Mother conceded that prior to the dependency petition, Father and Mother had joint legal custody as well as a custody agreement for Father to have D.H. alternating weekends.

After Mother's testimony, the juvenile court indicated it did not need to hear testimony from Father and asked for argument. DCFS counsel argued for joint legal custody given they had alternating weeks of physical custody and suggested that the restraining order could be modified to allow communication. D.H.'s counsel joined DCFS and asked for joint legal and physical custody. Mother's counsel asked for the mediation agreement to be stricken and argued that the existence of the restraining order against Father prevented joint legal custody. Mother's counsel also argued that Mother should have sole legal and physical custody at least until the restraining order expired.

After Mother's counsel finished arguing, the juvenile court stated:

"There's one real easy way to fix this problem. Real easy way.

"And I'll order sole legal custody to father, and the rest of the . . . the mediation agreement can be in place.

"I think mother's putting obstacles up. I think she's trying very deliberately to prevent father from being involved in his child's life.

"They have had extensive problems, while this case has been in court, enforcing father's visits. And mother has not yet seized on another obstacle she can throw in his way.

"I'll point out that this case came into the system because of the mother's conduct and behavior.

"Father has done everything that the Court has asked.

"He's been very cooperative.

"So I think mother is making things much more difficult, as far as this whole communication, than needs to be done.

"I didn't find her testimony at all credible. And, frankly, at one point I did consider whether or not I should just vacate the custody arrangement, the physical custody arrangement, and order custody with the father.

“However, it is very apparent to me throughout this case, and as well as the family law case, that the Department and the family law court have been trying to keep in place the visitation that’s currently going on.

“So father is to have sole legal custody, joint physical custody, with the existing arrangement that was agreed upon and signed off on by both parents.”

When Mother’s counsel objected because the court was altering the arrangement from joint legal custody to sole legal custody, the court noted that Mother “was the one who made this an issue.” Mother’s counsel then contended that the court was acting hastily and punitively and attempted to make additional arguments, but the court stated that it had ruled and counsel’s objection was noted.

The court’s February 26, 2013 order stated that it would terminate jurisdiction “once a family law order is received.” The court indicated that the family law order was to indicate “sole legal custody to Father and joint physical custody to parents” with parents to communicate by e-mail only.

At the March 8, 2013 hearing the court terminated jurisdiction, finding that the conditions which justified the initial assumption of jurisdiction no longer existed and were not likely to exist if supervision was withdrawn. The court entered a family law exit order, granting legal custody to Father and physical custody to Mother and Father.

On April 25, 2013, Mother filed a notice of appeal.

DISCUSSION

Mother contends that the juvenile court’s decision to award sole legal custody to Father was an abuse of discretion as “no party requested the sole legal custody the court ordered.” In addition Mother argues that both parents had problems with communication, not just Mother, and that it “was an undisputed fact that the parties had difficulty communicating.”

When a juvenile court terminates jurisdiction in a dependency case, it may issue an order for custody and visitation of the dependent child. (Welf. & Inst. Code, §§ 362.4, 364; *In re Chantal S.* (1996) 13 Cal.4th 196, 202–203.) In doing so, it has broad

discretion to determine what serves the child's best interests, and its decision will not be reversed absent a clear abuse of that discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; see also *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465 [juvenile court's visitation order reviewed under the abuse of discretion standard]; *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32 ["The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test."].)

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citation.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

We conclude that the juvenile court did not abuse its discretion in awarding Father sole legal custody and joint physical custody. The trial court's decision was not outside the bounds of reason given the acknowledged difficulties in communications between Mother and Father, suggesting that joint legal custody would be problematic and sole custody would be in D.H.'s best interest, and given the juvenile court's finding that Mother was not credible and was trying to prevent Father from being involved in D.H.'s life while finding Father to be very cooperative, suggesting that sole legal custody with Father rather than Mother would be in D.H.'s best interest.

In considering the totality of the circumstances, and evaluating the children's best interests, we conclude the juvenile court did not abuse its discretion. The juvenile court's orders do not forever bar Mother from sharing legal custody with Father as she may seek a modification of these orders in the family law court if circumstances change and warrant such a modification. (Welf. & Inst. Code, § 362.4; *In re Chantal S., supra*, 13 Cal.4th at pp. 212–213.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

MILLER, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.